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Letter dated 4 January 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

I have the honour to forward, enclosed herewith, the comments of the Government of the Republic of Serbia (see annex) on the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, covering the period from 1 September to 15 December 2007 (S/2007/768), which contains the comments of the Government on annex I of the report (Technical assessment of progress in the implementation of standards for Kosovo) (see enclosure).

I should be grateful if you would have the present letter, its annex and enclosure circulated as a document of the Security Council.

(*Signed*) Pavle **Jevremović**
Permanent Representative

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Annex to the letter dated 4 January 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

Comments on the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2007/768)

1. The report briefly touches upon the talks on Kosovo's future status led by the "Troika". Although this matter was the subject of a previous report, in these comprehensive comments of Serbia some basic facts should be stated.

2. The negotiations between Belgrade and Pristina on the future status of Kosovo under the auspices of the "Troika" evolved within a span of one hundred and twenty (120) days, but within only five sessions of direct talks between the Serbian and Albanian sides, for a total of only thirteen (13) hours. Therefore, a statement that the negotiations "left no stone unturned" was an exaggeration.

The Serbian side proposed a model of functional substantial autonomy which complies with: (a) the request of Pristina that "Belgrade does not rule Kosovo"; (b) the principles of the Contact Group on the future status of Kosovo; (c) the provisions of international law – the UN Charter, the Helsinki Final Act etc; (d) the Constitution of the Republic of Serbia; and (e) the UNMIK – FRY/Republic of Serbia Common Document, signed 5 November 2001, which in its Article 5 "reaffirms that the position on Kosovo's future status remains as stated in UNSCR 1244 and that this cannot be changed by any action taken by the Provisional Institutions of Self-Government".

The Albanian side did not take into consideration the proposal of the Republic of Serbia, relying on relevant promises given by the highest representatives of the US and the EU in support of "supervised independence", i.e. the "Ahtisaari Plan". The "Troika" did not reject the plan for secession offered by the Albanian side in the form of an inter-State treaty on cooperation between Belgrade and Pristina, although it was obviously contrary to the UN Charter and UNSCR 1244.

Serbia's proposal for substantial autonomy is not only the solution for Kosovo's status, it is also an offer of reconciliation to the Albanian national minority in Kosovo. The Republic of Serbia cannot accept any request for secession by any of the twenty-seven national minorities which make part of its citizenry. Democratic Serbia provides a safe roof for all its citizens since it is a recognized, respectable and reliable partner in international relations, with a clear perspective to become a EU member State.

3. The report deals with the recent elections in Kosovo at length. What needs to be pointed out in this respect is that these elections were held while the negotiations on the future status were still going on and therefore had a negative effect on the negotiations, especially since the focus of all the election campaigns was independence.

4. The elections were held on 17 November 2007 in spite of the fact that the necessary preconditions had not been fulfilled:

(a) Members of the Serb and other ethnically discriminated communities in Kosovo still do not enjoy basic human rights – personal security, freedom of movement, property rights and freedom of speech and they are living in an atmosphere of constant danger and intimidation;

(b) The process of return of internally displaced persons (207 000) has hardly begun – 6.09 per cent returned (UNHCR data), 1.45 per cent (data of the Ministry for Kosovo and Metohija of the Republic of Serbia);

(c) The consequences of the mass violence in March 2004 against Serbs and other ethnically discriminated communities and assaults on centuries-old Serb holy sites have not yet been remedied;

(d) The standards established by UNMIK have not yet been fulfilled (stated also in the report of the Commission of the EU);

(e) UNMIK has been transferring the competences to PISG pursuant to the "Ahtisaari Plan" as if this Plan had been considered and adopted by the UN Security Council and as if the negotiations on the status of Kosovo were not going on;

(f) The leaders of PISG constantly repeated that on 10 December 2007 they were going to declare independence of Kosovo, while not being warned by UNMIK about the implications of these statements;

(g) High-level officials of influential countries were frequently expressing their support for independence as the only solution, although the negotiations on the status of Kosovo were going on. Some other countries did the same by supporting the "Ahtisaari Plan" which envisaged "supervised independence" although it was not adopted in the UN Security Council;

(h) EU intensified preparations for its civil mission in Kosovo pursuant to the "Ahtisaari Plan" as if the negotiations on the status of Kosovo were brought to an end and as if this Plan had already been adopted in the UN Security Council; they have even announced vacancies for local staff for a possible EU Mission in Kosovo despite the negotiations on the status of Kosovo which were carried out with the EU representative as a moderator;

(i) In these elections, UNMIK allowed the candidatures of persons indicted of crimes against the Serbs and other ethnically discriminated communities in Kosovo by the Hague Tribunal for the Former Yugoslavia, as well as of

individuals who usurped the property of Serbs and other ethnically discriminated communities. UNMIK did not react to related evidence submitted by the Government of Serbia.

For these reasons the authorities of the Republic of Serbia could not encourage the Serbian population in the province to participate in these elections.

It is a question for the UN Security Council to consider whether UNMIK's decision to allow these elections contributed to the stability, security and reconciliation in Kosovo.

5. The main problem with the report is an unfounded optimism about the implementation of standards in Kosovo. The technical assessment of progress in their implementation, prepared by the Special Representative of the Secretary-General for Kosovo, found in annex I of the report, shows that in all substantive areas of standards implementation, the progress is described mainly by expressions of wishes for the future, needs to achieve something that has not been achieved so far and future intentions in this regard. What clearly comes out is that very little in terms of standards has been implemented in Kosovo. Yet the report flatly states that "There was steady progress in all substantive areas of standards implementation, as reflected in the Technical Assessment annexed to the present report" [(!)] (Para. 15) and that "the steady progress by Kosovo's Provisional Institutions in the implementation of standards is encouraging and should be further accelerated" (para. 35).

6. The report contains some statements which can be interpreted as contributing to the creation and strengthening of the pressure towards a speedy achievement of independence of Kosovo, most notably in paragraphs 8, 33 and 34. While the report repeatedly warns about the risks of instability in Kosovo and the region if the future status process is delayed, no mention is made of instability risks that might be created by the independence of Kosovo, in spite of a growing number of concerns in many countries. This is an impermissible omission for a UN report.

7. In paragraph 22, the report speaks of the "issue of toxic and/or radioactive materials currently present in Kosovo". For anyone unfamiliar with Kosovo issues the origin of such materials would remain a complete mystery. The fact that it is a consequence of the use by NATO of the ammunition containing depleted uranium during its aggression on the FRY in 1999 remains completely hidden.

8. In paragraph 24, the report states that there was a total of 18 incidents involving religious sites reported, of which "only two were considered to be serious". The use of the word "only", impermissible in the report which aims to be impartial and objective, serves to reinforce the impression that there is a conscious intention to present the situation in Kosovo in a better light than it deserves.

9. The UN Secretary-General was stressing in his regular reports on the situation in Kosovo that the transfer of competences from UNMIK to PISG was being carried out pursuant to UNSCR 1244, which is the assessment that Serbia cannot support.

In fact, the transfer of competences from UNMIK to PISG is implemented pursuant to the "Ahtisaari Plan" which was not adopted by the Security Council. This transfer is also carried out without any consultation with the authorities in Belgrade, although this was an obligation pursuant to the UNMIK –FRY/Serbia Common Document signed in November 2001. Besides, the legislative activity of the PISG is based on the "Ahtisaari Plan", whilst UNMIK, which has the mandate to implement UNSCR 1244, supports this process which represents a direct violation of this resolution.

Despite the fact that according to UNSCR 1244 UNMIK has specific competences regarding the return of refugees and IDPs, it was announced on the UNMIK website (12 December 2007) that these competences were transferred to the Provisional Institutions of Self-Government. This fact is not presented in this report. UNMIK has thus violated the provisions of UNSCR 1244 and released itself of the responsibility for the respect of human rights in Kosovo at the moment which, politically and security-wise, is the critical point for the province, the rest of Serbia and the region.

There are 207,000 internally displaced persons in Serbia and after eight years they have no prospect of returning to their homes in Kosovo. In contrast, in 1999, also under the UNMIK administration, some 600 000 displaced ethnic Albanians were able to return to Kosovo in only a few weeks.

10. After UNMIK and KFOR came to Kosovo in June 1999, until January 2007 there were 7,108 ethnically motivated assaults, 581 Serbs and 104 other members of ethnically discriminated communities were killed, 861 Serbs and 230 members of other nationalities were abducted and 960 persons were severely wounded; 17,736 houses were destroyed, 18,557 houses were looted, 27,000 apartments and houses were usurped. Furthermore, 119 Orthodox churches and monasteries and 122 Serbian cemeteries and 24 cultural monuments were vandalized. In March 2004, in only two days of organized violence, 3,870 persons were expelled, eight Serbs were killed and 143 wounded, six towns and nine villages were ethnically cleansed, 935 houses and public objects were demolished, three cemeteries were destroyed and 35 churches and monasteries were burned down (out of which 18 were registered as monuments of particular cultural value, including one that is on the UNESCO's list of world cultural heritage). The report indicates that only 30 persons were sentenced for all these crimes committed under UNMIK administration.

11. UN representatives, members of UNMIK, in their reports on Kosovo speak of the Serbs in the province as a "national minority". The Serbs are the majority people in the State of Serbia and this terminology – apart from being inaccurate – is also biased in favour of Kosovo's independence.

12. The following facts bring into question the proclaimed multiethnic character of the province:

(a) 250,000 exiled persons, out of which 207,000 are internally displaced persons in Serbia waiting to return to their homes;

(b) Violation of human rights and restricted freedom of movement for members of ethnically discriminated communities;

(c) Intimidation of members of ethnically discriminated communities, as well as assaults against their property and cultural and religious heritage.

Enclosure

Comments on annex I of the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2007/768)

(Technical assessment of progress in the implementation of standards for Kosovo)

1. Functioning of democratic institutions

Provisional Institutions of Self-Government (PISG) in Kosovo and Metohija do not function in accordance with the proclaimed standards – they are weak, they are not able to ensure full implementation of human rights standards, and they lack adequate capacity for performing in practically all fields of political, economic and social life.

We particularly point at the latest report of the EU Commission (***Kosovo under UNSCR 1244 2007 Progress Report,*** issued on 6 November 2007), in which it assessed that in practically all fields of life in Kosovo and Metohija there was no progress in building a stable democratic society and institutions, or that progress is very little.

According to reports of the Special Representative of the Secretary-General in Kosovo and Metohija the capacity of these institutions is sufficient to justify the transfer competencies from UNMIK to them.

1.1 Work, employment and social security

Since UNMIK administration took over the administration in Kosovo and Metohija the situation in the field of work, employment and social protection has significantly worsened:

- In 1999, 507 (out of 509) different enterprises – 305 socially owned, 193 mixed and 11 public enterprises – stopped their activities, and 76,535 workers lost their jobs;
- More than 30,000 Serbs who lost their jobs are formally listed as employed without social rights and social protection;
- Serbs and members of other ethnically discriminated communities have the chance to find employment practically only within institutions and programs financed by the Republic of Serbia;
- Social allowances for beneficiaries belonging to ethnically discriminated population in Kosovo and Metohija are provided from the budget of the Republic of Serbia;
- Low economic activity has strengthened illegal business and criminal activities, which spill over to the neighboring countries and beyond;
- A variety of specific problems are not being resolved, such as the bad cooperation with the International Red Cross in Kosovo and Metohija; alarming situation in institution for mentally disordered persons (for instance in Štimlje) and in other institutions for medical care.

1.2 Education

Since UNMIK came to Kosovo and Metohija in 1999 the schools attended by Albanian pupils are beyond the educational system of the Republic of Serbia. Pursuant to the UNMIK-FRY/Republic of Serbia Common Document signed in November 2001, based upon Resolution 1244, primary and secondary schools in Serb communities can work in line with the plans and programs of the Ministry of Education of the Republic of Serbia.

In the school year 1998/99 in 29 municipalities, i.e. in 5 districts, 45,279 pupils in primary and 19,966 in secondary schools were attending classes in Serbian. In 2002/03, the number of pupils was reduced to 13,441 in primary schools and to 6,154 in secondary schools. In 2007/08 there were 13,366 pupils in primary and 6,037 in secondary schools. Hence, the number of pupils was constantly declining.

The Serb community had good cooperation with UNMIK before it transferred its competences to PISG (the Ministry of Science and Technology). However, after this transfer, problems emerged. Schools with pupils of Serbian and other ethnically discriminated nationalities were denied autonomy in their work; illegal announcements were made for jobs already covered by teachers of discriminated ethnicities, the principals were illegally appointed and the jobs were given to persons with inadequate professional education; newly established curricula and teaching plans, apart from technical deficiencies, contain also a variety of false and scientifically unfounded facts. Lack of security in objects in which the classes are held, daily interruptions of classes, limited freedom of movement of pupils, dislocation of school premises to inadequate buildings, private houses and the like in villages and enclaves with undersized Serb and other ethnically discriminated communities remain a considerable problems.

A serious problem emerged when the school registry books came under the jurisdiction of the Ministry of Science and Technology. Those who got their education in the territory of Kosovo and Metohija, but did not manage to collect duplicates of their diplomas because the registers remained within the jurisdiction of Albanians, have problems to obtain these documents. Therefore, a request was submitted to UNMIK to issue duplicates of all registry books in possession of the Ministry of Science and Technology.

The Gorani community in Kosovo and Metohija is in a particularly difficult situation. The intention of PISG is to forcefully assimilate the Gorani community by enforcing the Albanian language as the mother tongue. This leads to a systemic emigration of Gorani from Kosovo and Metohija, which is part of "soft ethnic cleansing". At the beginning of this school year the classes for Gorani pupils in Restelica, Radeša, and Kruševo were delayed because the schools were closed and the teachers of Gorani origin who wanted to teach in Serbian and in accordance with Serbian education programs were denied access to these buildings. This situation provoked the parents and the children to protest and to file petitions declaring their will to follow the education plans of the Republic of Serbia.

1.3 Healthcare

Up to 1999, the healthcare institutions in Kosovo and Metohija were part of the network of the Ministry of Health of the Republic of Serbia. After the expulsion of the population and those working in healthcare services, the healthcare system of Kosovo and Metohija imploded and health services collapsed.

According to the report of the FR Yugoslavia's Coordination Center for Kosovo and Metohija for 2002/03, some 8,000 Serbs working in healthcare were expelled; some 4,000 remained, the majority of which have been working in the northern part of Kosovo and Metohija. At the end of 1999, the Ministry of Health of the Republic of Serbia regrouped and kept some of the healthcare objects in Kosovo and Metohija in order to ensure primary healthcare service for the remaining ethnically discriminated population. Other healthcare institutions from the previous network of Serbia's healthcare institutions continued to provide healthcare service exclusively to the Albanian population.

Before it transferred its competences in the field of healthcare to PISG, the UNMIK administration was open for cooperation and supported the undisturbed functioning of institutions under the jurisdiction of the Ministry of Health of the Republic of Serbia. However, after this transfer, there were constant attempts to forcefully assimilate these institutions into the healthcare system of PISG, whilst ethnically discriminated population in Kosovo and Metohija has been deprived of one of the basic rights – the right to equal access to medical treatment. The biggest problem these healthcare institutions are facing is inadequate supply of medications and other sanitary material.

Upon decision of the Government of the Republic of Serbia at the beginning of 2002 within the Coordination Center for Kosovo and Metohija was established a Working Group for Healthcare, which cooperates with the Ministry of Health of the Republic of Serbia and with the Republic's Healthcare Bureau, as well as with UNMIK (the Department of Health in Pristina). During 2002, the Working Group analyzed the situation in healthcare institutions in Kosovo and Metohija as regards equipment, professional staff, supplies of medication and sanitary material, and undertook to build adequate institutions (Healthcare Institute in Kosovska Mitorvica and the Department for Alimentary Control and the Protection of Environment; the dentist ambulance in Velika Hoča, as well as the Central Pharmacy in Kosovska Mitrovica; the hospital in Laplje Selo and the gynecological and surgery hospital in Gračanica were built in cooperation with UNMIK; the Medical Faculty was moved from Pristina to Kosovska Mitrovica).

Medication supply is organized via "Velefarm" company from Kosovska Mitrovica, which is registered according to the regulations of the Republic of Serbia and the relevant Ministry within PISG. However, the supply is cumbered due to the fact that "Velefarm" must get permission from the relevant Agency within the Ministry to import the medications. While waiting for the permission, the medications are stored in the Health Centre in Raška, under conditions which do not comply with the standards for medication storage. Besides, there were also obstacles at the administration line – it was happening that the Kosovo Albanians mark some medications as "unregistered in the territory of their state" and confiscate them; if there were substances which can be classified as narcotics, persons who transported them were detained and accused for trade in narcotics; the trucks transporting drugs and

other sanitary material are often intercepted by the so-called mobile customs officers, which allegedly control the documentation and the goods.

1.4 Local self-government

The UNMIK-FRY/Serbia Common Document expresses mutual consent that the Resolution 1244 can be successfully implemented only by common engagement. This document confirms common duties related to the security and human rights, protection of rights of ethnically discriminated communities and the return of internally displaced persons. So far, this agreement has not been fully implemented.

Through its regulations, UNMIK violated this agreement which is *de jure* in force. Pursuant to this agreement, working groups for dialogue were established in eight fields. Four out of eight groups are nominally active. In fact one of them is in functioning.

Human rights of Serbs and other ethnically discriminated citizens are flagrantly violated. Eight years after the arrival of international forces many of them live in enclaves, isolated and without possibilities to communicate and enjoy freedom of movement (KFOR is protecting these enclaves).

In 2002, relevant bodies of FRY and the Republic of Serbia formulated Basic Strategies for the decentralization of Kosovo and Metohija and for the strengthening of self-governance on the local, national and regional level, as well as the Project for establishment and development of local self-government in Kosovo and Metohija. These documents could have been the basis for common engagement of UNMIK and relevant bodies of the Republic of Serbia. The basic aim of decentralization envisaged the inclusion of Serbs and other ethnically discriminated communities into the framework of substantial autonomy through the creation of new entities of local self-government which would enable these communities to enjoy their basic rights in accordance with Resolution 1244. Preconditions for such decentralization and the transfer of power are the security, political, administrative, economic and cultural guarantees given to Serbs and other ethnically discriminated citizens.

On the contrary, UNMIK initiated pilot-projects in the field of decentralization which did not respect the requests and needs of discriminated communities. These pilot-projects were not carried out (for instance, the pilot-project related to the formation of the municipality Gračanica). Without explanation and contrary to the needs of ethnically discriminated communities, UNMIK regulation abolished the municipality Gora, which is an example of forceful Albanization of this specific ethnic group – the Gorani.

1.5 Standards

The Republic of Serbia in the Declaration on Kosovo and Metohija which the National Assembly of the Republic of Serbia adopted in 2003 reaffirmed unequivocally the position expressed in the Common Document in 2001 (that the Resolution 1244 can be successfully implemented only through common engagement of all interested parties). The Declaration reaffirms this position as the basic precondition for building a democratic society and democratic institutions, which would enable all

Kosovo and Metohija's citizens to enjoy substantial autonomy within the Serbian State. The National Assembly of the Republic of Serbia presented its critical notes regarding the UNMIK version of the Kosovo Standards Implementation Plan, but while finalizing the Plan, UNMIK did not take them into consideration.

At the session held on April 24, 2002, the UN SC supported the policy "standards before status" aiming to efficiently support Resolution 1244, as the channel for the peaceful and political solution of the crisis. The established standards have never been implemented. Nevertheless, UNMIK transferred their implementation to the weak PISG.

In the eight years of UNMIK governance over Kosovo and Metohija there was a constant reduction of preconditions for defining the future status of the province and for the realization of (supervised) independence:

- From June 1999 until June 2003, UNMIK was engaged in the creation of PISG, the preparation and adoption of the Constitutional Framework and the transfer of competences to PISG;
- From mid-2003 until the end of 2003, UNMIK was working on the definition of standards, whose implementation is the precondition for the beginning of talks on the future status. Until mid 2004 the proclaimed policy "standards before status" was promoted;
- After Albanian terrorists' violence in March 2004, the policy "standards and status" was introduced in parallel with the policy "standards before status". UNMIK and the international community realized that there was no substantial progress in the standards achievement and that there will be none, so they abandoned the attempts to quantify the implementation of standards and make it measurable. UNMIK's new approach implied that verbally expressed intentions represent sufficient evidence that standards are being implemented in reality;
- In 2005 the importance of standards was completely marginalized. To the forefront come talks on the **status**, which becomes the exclusive precondition for progress in reaching the standards. In this phase, which is still lasting, quantification of standards is completely excluded.

2. The rule of law

Kosovo and Metohija are characterized by a high degree of legal insecurity. Administrative capacities of the Ministry of Justice are weak. The judiciary is not independent. In front of the courts there are more than 50,000 civil and over 30,000 criminal cases. Police are conducting investigation in an unprofessional manner.

2.1 The judicial system in Kosovo and Metohija

In the beginning, the judicial system in Kosovo and Metohija was under the jurisdiction of the UNMIK Judicial Department. However, Regulation 2005/53 established a separate Ministry of Justice, which ended the tendency to create a multi-ethnic judiciary. According to the OSCE data, in Kosovo and Metohija there are 313 judges, 86 prosecutors and 543 lay judges (out of which 16 judges

and 3 prosecutors are Serbs, and 16 judges and 6 prosecutors belong to other ethnically discriminated communities).

The basic problem in the judicial system continues to be the fact that it remains inaccessible for Serbs and others. Due to the lack of security, physical access to the courts is difficult. Sometimes UNMIK police accompanies transportation, but in principle this rarely happens. Intimidation of witnesses is widespread and the courts are not capable to protect them.

Municipal courts in Kosovo and Metohija had received over 20,000 requests – charges from Serbs and other discriminated persons for compensation as regards their property destroyed since June 1999. Courts in Kosovo and Metohija have not ended any of these requests. In August 2004 and November 2005, the UNMIK Judicial Department issued instructions for the presidents of the Supreme Court, the district courts and the municipal courts not to act upon compensation requests because this would allegedly burden their work and, also, security could not be guaranteed to Serbs and other discriminated persons who should access the courts. So far, this issue remains unresolved, and no hearing has been scheduled as regards any of their charges. There are many charges filed against UNMIK, KFOR, the Government of Kosovo and municipalities which did nothing in March 2004 to prevent the destruction of Serb property, although it was their duty to do so. The status of these charges in front of the mentioned courts remained unchanged.

In regard to the pogrom in March 2004 little was achieved in establishing criminal responsibility. Many criminal proceedings were stopped or the charges rejected. The declared 30 sentences are extremely mild.

Apart from forceful seizure, the Serb property is also usurped through court procedures. In municipalities, in which there is no cadastral documentation (mainly in Metohija, Peć, Klina, Dečane, Istok), persons of Albanian nationality register in the cadastres as owners of property belonging to the expelled Serbs. They do it by submitting false contracts on purchase and false authorizations of the real Serb owners. Albanians are submitting the false documentation to municipal courts that issue judgments which verify the property rights to "new" (Albanian) owners, after that they register it in cadastres. Expelled Serbs who are displaced beyond Kosovo and Metohija are in no position to find out what is happening with their property because they have no access either to cadastres or to courts in Kosovo and Metohija. It often happens that Albanians destroy existing Serb houses and register in the cadastral books their newly built houses.

In front of regular courts in the municipalities Peć, Klina and Istok there are some 300 court proceedings initiated by the real owners of the property which was alienated with false contracts. Also, criminal charges against forgers were filed in criminal courts and prosecutors' offices. According to our data the courts have not brought to an end any of the related proceedings, nor was the property returned to the real owners of Serb nationality.

The practice of using *temporary representatives*, also represents a misuse of courts for seizing Serb property. These representatives are appointed by the court for absent Serbs who were sued by the Albanians who wanted to establish their ownership rights over real estate allegedly bought from the

Serbs. The temporary representatives are appointed from among Albanian lawyers and they are paid by Albanian plaintiffs. Typically, there is no attempt to find the addresses of the expelled Serbs who, as displaced persons, live beyond the territory of Kosovo and Metohija. OSCE is mentioning these cases in its reports.

Serbs have no possibility to initiate and conduct trials before the courts in Kosovo and Metohija primarily because they have no freedom of movement and no security. There are only few Serbian lawyers in Kosovo and Metohija and they cannot respond to all the needs of the Serbian population for legal protection; besides, their own security is endangered in trials held in Albanian environments. Trials are mainly conducted in Albanian, with inadequate translations.

Even in cases when persons of Serb nationality manage to initiate court proceedings and get a judgment in their favor, these judgments are not implemented by the courts because the Albanian judges do not want to displease their compatriots. Also, the Kosovo Police Service does not engage in the implementation of court decisions in favor of ethnically discriminated persons. In a deeply criminalized Albanian society which is divided in clans, it is impossible to provide for legality and respect for court decisions.

3. Freedom of movement

Members of ethnically discriminated communities in Kosovo and Metohija are deprived of the basic right to freedom of movement.

The fact is that one of the basic human rights, which is in the UN member countries denied only to imprisoned persons, **is denied to a significant population of Kosovo and Metohija only for ethnic reasons.**

4. Sustainable return and the rights of discriminated communities

The return process is a field in which neither PISG nor UNMIK have achieved any results. This is the basic parameter that no multiethnic society is being built in Kosovo and Metohija.

According to UNHCR data, eight years after UNMIK came to Kosovo and Metohija there are 207,000 internally displaced persons (IDP) expelled to Serbia, and 18,000 IDPs expelled to Montenegro. In Kosovo and Metohija there are some 22,000 persons expelled from their own settlements to some other places within the province, which have the status of internally-internally displaced persons (I-IDP).

The right to return is based upon international principles of protection of basic human rights and freedoms and upon humanitarian standards defined in the **UN Guiding Principles on Internal Displacement.**

4.1 Return under UNMIK Administration

The UNMIK-FRY/Serbia Common Document laid the foundation for cooperation in implementing Resolution 1244 and it represented the framework for the elaboration of numerous programs for return of expelled and displaced persons from Kosovo and Metohija – *Framework for Return* 2001; *Concept of Rights to Sustainable Return* 2002; *Foundations for Return* 2002, etc. **None of these programs was implemented.**

The subsequent *Revised Manual on Sustainable Return* did not include procedures for return into urban settlements, return to a settlement which was not the previous address of expelled persons in Kosovo, nor the provisions on integration of internally-internally displaced persons (I-IRL). It did include, however, the right of "taxation" of the return of IDPs through the so-called "balance-projects" of municipalities which were to receive the returnees – the unwritten rule by which the so-called "receiving community" gets significant funds (in some cases more than 50%) from each return-related project with the aim to "mollify" them to accept the returnees. In this way the return of IDPs declined, because part of the return funds was spent for the "balance projects". Despite the fact that some isolated individuals from the international community opposed to such practice, the majority accepted the described conditionality of the return process as completely normal and desirable.

If all the funds allocated in 2007 to "balance components" were put together, they would equal or exceed the total sum planned for the return. It becomes clearer why PISG and UNMIK keep stating that they lack funds for the return of IDPs. Return under UNMIK administration was insignificant, and not even the obligations to annul damage and to help return of IDPs expelled after the pogrom on March 17, 2004, were fulfilled.

Municipal strategies for return, which in UNMIK reports are evaluated as contribution to the process of return, do not deserve this name. They lack elaboration of the three basic components: (a) insight into the desire of IDPs to return and into their needs; (b) procedures for the integration of returnees into the local societies in Kosovo and Metohija; and, (c) activities which will lead to their implementation.

The Working Group for Direct Dialogue and Return, composed of representatives of Belgrade, Pristina and UNMIK, which was established pursuant to the Common Document signed in 2001, managed only in **2006** to formulate the ***Protocol on Voluntary and Sustainable Return*, by which the procedures were simplified and return was allowed to a place of choice (seven years after UNMIK came to Kosovo and Metohija!!!)**. This document partly neutralized the negative consequences created by the *Revised Manual for Sustainable Return*. However, due to obstruction of PISG, and the absence of reaction on part of UNMIK, the Protocol has not been implemented, nor did the Working Group hold sessions.

Pursuant to the Resolution 1244 there are separate UNMIK competences related to return, so they cannot be completely transferred to the PISG. However, by its Regulations, UNMIK did transfer them to PISG (Ministry for Return).

The UNMIK announcement on December 12, 2007, that the competences pertaining to the return of internally displaced persons will be fully transferred from UNMIK and UNDP to PISG is completely contrary to Resolution 1244. Paradoxically the same announcement mentions that "humanitarian transports should remain due to security reasons".

In regard to return, the work of UNMIK is best illustrated by the words of one of the GS Special Representatives, Soren Jesen-Petersen, who said that the "return should be measured by numbers of returnees, rather than by fulfilled conditions".

4.2 Conditions for return created under UNMIK administration

According to UNHCR data, after eight years only 16,452 persons returned (7,231 Serbs, 4,415 Ashkalia and Egyptians, 2,038 Romas and 1,425 Bosniaks). However, according to the data of the Ministry for Kosovo and Metohija only 3,000 IDPs out of the 16,452 nominal returnees really remained in Kosovo and Metohija. For administrative reasons they remained only formally registered in the settlements from which they were displaced.

Year	Returns to Kosovo – Ethnicity						
	Serbs	Roma	Ashkalia/ Egyptian	Bosniak	Gorani	Albanian	Total
2000	1,826	20	0	57	3	0	1,906
2001	679	214	533	0	0	27	1,453
2002	966	390	882	149	73	294	2,754
2003	1,549	287	1,182	393	145	245	3,801
2004	818	430	593	479	141	8	2,469
2005	738	235	727	246	125	49	2,120
2006	601	295	456	91	133	46	1,622
2007	54	167	42	10	54	0	327
Total	**7,231**	**2,038**	**4,415**	**1,425**	**674**	**669**	**16,452**

Source: *UNHCR 2007* web-site

The number of emigrants from Kosovo and Metohija is constantly rising. Having in mind that in **2000 there were 187,129 registered IDPs in Serbia** (data of UNHCR and the Commissariat for Refugees of the Republic of Serbia), and the most **recent UNHCR data showing that 207,000 IDPs are in Serbia, it can be concluded that since the arrival of UNMIK additional twenty thousand persons emigrated from Kosovo and Metohija.**

The basic reasons for such a situation are the following:

1. **Disrespect for human rights** in Kosovo and Metohija – bad security situation, no free movement (life in enclaves, under protection of KFOR), discrimination regarding access to basic public services, impossibility to find employment and freely engage in economic activities due to discrimination, usurpation of property and fear for life, particularly of those working in agriculture;

2. **Ethnic violence in March 2004** against members of ethnically discriminated communities, which gave a serious blow to the process of return. **Since then, return stagnates**. Crimes in the presence of UNMIK and KFOR represent evidence of a hostile attitude as regards others, who are not of Albanian origin, and show that **low intensity terror**, as a historically known practice of the Albanian population in occupying land/space in Serbia and in the Balkans, is still alive;

3. **Prohibiting IDPs to return to other settlements in the province which was in force until mid-2005**. The position of UNMIK and the international community was that the expelled Serbs and other non-Albanians can return only to places from which they fled, although the demographic picture of the province has already been substantially changed because this principle was not applied to Albanian returnees, nor was the mass immigration of Albanian population from neighboring countries controlled;

4. **Complicated procedures for return, which are in force even today, whilst those in charge of their implementation are not prepared, and not qualified**. The planning, conceptualizing and approval of complex projects for the return of IDPs was entrusted also to persons who have neither adequate knowledge nor relevant experience. Those who decide on projects for the return of IDPS, and in that way, on their future and their fate, are insufficiently informed as regards to both the procedures or the positive practice of return. Local authorities and PISG administration are incompetent, unprepared and corrupt, whilst the UNMIK administration has proven to be uninterested and inefficient;

5. **Lack of UNMIK interest for return and the illegal transfer of competences to Provisional Institutions of Self-government**. The return procedure is not transparent, **misuse and conditioning** are frequent, particularly on the part of municipal authorities. In order to give assent on return of refugees and to issue licenses for building the houses for returnees they demand in return construction of infrastructural objects, which they see as significant. In many return projects, which are nominally in the phase of realization, the "balance component" for infrastructure is twice as much as the component for the construction of houses for returnees. PISG administration is the one to approve these projects violating, in this way, the conditions established;

6. **Limited financial funds for return,** because the number of donors is declining and the financial means from PISG budget are symbolic. Demands of local authorities are megalomaniac compared to the real needs related to return. The monitoring over return procedures and funds allocated is weak. The misuse of funds for return increases the mistrust of IDPs, and of donors as well;

7. **Inefficient mechanisms for return of property**. Evidences that prove the property right, issued by the Housing and Property Directorate (HPO) and the Kosovo Trust Agency (KTA), are insufficient to enable a real return of usurped property. Judicial proceedings, as the second instance in a process of property return are lengthy and are carried out in Albanian, accompanied with mainly bad translation and are proven to be discriminatory as regards members of ethnically discriminated communities;

On the other hand, Serbia is facing new demands and an extremely difficult socio-economic situation (unemployment is 26.7%). Nevertheless, it accommodates some 207.000 IDPs, majority of them are

not in collective centers, still living in difficult conditions. Recently, the international community requested from Serbia to integrate the IDPs (207,000) and refugees (around 500,000), justifying it as a method to increase the level of respect for their human rights. However, in the past eight years the international community did almost nothing to bring the IDPs back to Kosovo and Metohija, nor to return the refugees to former SFRY republics from which they fled. We also remind that the engagement of this very same international community resulted in the return of six hundred thousands of Albanians to Kosovo and Metohija in only three months. Should it be understood that the UN **and other actors in the international relations justify ethnic cleansing only if the victims are Serbs?**

4.3 Consequences of neglecting the return process

Districts in Kosovo and Metohija	Municipalities in Kosovo and Metohija	No. of settlements in which Serbs lived before June 1999	No. of settlements ethnically cleansed after June 1999
Peć (West of Province)	Djakovica	8	8
	Dečane	13	13
	Klina	24	24
	Peć	38	37
	Istok	36	35
Kosovska Mitrovica (North of Province)	Vučitrn	27	24
	Kosovska Mitrovica	12	9
	Srbica	11	9
Kosovo (Centre-East of Province)	Priština	19	7
	Kosovo Polje	11	7
	Lipljan	23	12
	Podujevo	28	27
	Obilić	10	5
	Štimlje	4	4
	Uroševac	23	23
	Kačanik	3	3
Kosovsko Pomoravlje (South-East of Province)	Gnjilane	23	7
	Vitina	19	12
	Kosovska Kamenica	41	5
	Novo Brdo	10	1
Prizren (South of Province)	Suva Reka	10	10
	Orahovac	8	6
	Prizren	26	23
Total		427	311

5. Economy

5.1 Privatization

The process of privatization started in May 2003[1]. It has been carried out by the Kosovo Trust Agency, an independent body within UNMIK administration, established to manage property of socially owned and public enterprises and to undertake measures which it deems necessary for the preservation or enlargement of the property's value. KTA sells shares of the newly established branches ("new enterprises") to which the assets of the socially owned enterprises were transferred and organizes privatization in accordance with the spin-off method and principle of voluntary liquidation. Funds received from selling the enterprises are kept on a separate KTA account, and KTA manages these amounts. The majority (80% of funds collected from the selling) is allocated for the creditors and owners, whilst 20% is allocated for the employees in the socially owned enterprise who are entitled to the shares pursuant to lists composed by the organ which represents the workers, and subsequently confirmed by the KTA.

So far, thirty tenders were announced, encompassing 361 old enterprises and 445 newly formed companies, out of which 330 were verified, with 303.367 million euros collected.

5.2 Basic objections regarding the privatization process

1. Tenancy with the right of alienation – exceeding of right

Regulation 2003/13 of the Special Representative of the Secretary-General on the modification of right to use the socially owned real estate property enables the newly established branch to acquire the right of tenancy over the property which was transferred from the socially owned enterprise, instead of the right to use it, and to do so for a period of 99 years. Such right of tenancy implies also the possibility to transfer the property to third persons, by which it acquires all the characteristics of the ownership right. Thus, **one of the basic legal principles is violated – the principle that nobody can transfer to someone else more right than he himself has**.

As an institution of provisional administration in Kosovo, the **KTA introduces a permanent change of ownership rights**, because the tenancy for a period of 99 years is basically equal to the deprivation of property rights, since the **real owner does not decide either on the establishment or on the ending of the tenancy**, and the **tenant has the right to dispose of the property**.

[1] Privatization in Kosovo and Metohija is based on regulations of the Special Representative of the UN Secretary-General: (a) Regulation 2003/13 on the change of the right of using socially owned real estate; (b) amended by Regulation 2004/45 (this Regulation changed the right of use of the property of socially owned enterprises which is transferred to newly established branches of these enterprises for lease, with the possibility to further transfer this property to third persons); (c) Regulation 2002/12 on the establishment of the Kosovo Trust Agency; and, (d) amended by Regulation 2005/18 (KTA) manages socially owned enterprises and other forms of ownership which are registered and located in Kosovo; it has the right to found branches of socially owned enterprises and to sell shares thereof).

2. Disregarding the rights of creditors and old owners

The ongoing privatization is flagrantly violating the rights of owners and creditors.

First, the issue of ownership over enterprises which are privatized is a contentious one because prior to the privatization process there was no systemic solution to the problem of ownership over enterprises planned for privatization. Many of these enterprises were founded by the Republic of Serbia, and its institutions and funds were investing in these enterprises for decades, as did numerous national and international legal subjects. These are significant funds and properties, whose real right-holders cannot be disregarded (evidence can be found in court registers). By its regulations UNMIK created a legal foundation for the equalization of all socially owned enterprises in the territory of Kosovo and Metohija and started the privatization process on these foundations. UNMIK directed the damaged ones to ask for their rights before the courts. However, Regulations (2002/12 and 2005/18) related to KTA do not elaborate what is the legal basis for the equalization of all the socially owned enterprises in Kosovo and Metohija when the ownership rights were not previously determined. In this legally unfounded manner, the process of privatization included all socially owned and public enterprises in the territory of Kosovo and Metohija only by virtue of being geographically located in this territory.

Second, there was no systemic solution for claims of other economic subjects in regard to privatized enterprises: claims of other enterprises and banks from the rest of the territory of the Republic of Serbia, debts guaranteed by the State, foreign debts guaranteed by banks beyond Kosovo and Metohija, the issue of linked enterprises etc. Creditors are simply instructed to ask for their rights before courts.

Third, judicial protection of property rights and creditors' rights which is to be effected through a Special Chamber of the Supreme Court of Kosovo (Regulation 2002/13), is inefficient in practice. The ethnic composition of this institution does not reflect the ethnic composition of the province; judicial proceedings are lengthy and uncertain; right-holders cannot have their rights at disposal until the end of these proceedings.[2]

Fourth, even if there is a judgment favorable to creditors and owners, the possibility for real and just compensation to the old owners and creditors remains contentious, since the funds which are blocked within a separate account of the KTA are completely devaluated until the end of the court proceedings.

Fifth, in the Kosovo privatization process the issue of denationalization has been completely ignored. Although in Kosovo and Metohija nowadays there are no legal rules to regulate denationalization, one should not disregard the issue of restitution of property nationalized after World War II. In case that the privatization process in Kosovo and Metohija continues according to the principle of "tenancy for a period of 99 years with the right of alienation", and happens before denationalization, it diminishes

[2] OSCE gave its evaluation of the judicial system in Kosovo and Metohija in the "First Review of the Civil Justice System", 06/2006.

the prospects of the owners of nationalized property to restore their property. The process of denationalization is implemented in Serbia and in the region, whilst in Kosovo and Metohija the nationalized property is treated as if it was socially owned property.

Sixth, apart from representing disregard for interests of old owners and creditors, privatization in Kosovo and Metohija is giving rise to legal uncertainty. It creates a basis for starting judicial proceedings over ownership rights, remuneration of debts, establishment of rights to compensation in front of the courts in Kosovo and Metohija and international courts and arbitration – and is increasing the possibility to question the ownership rights. This legal uncertainty does not contribute to the creation of an ambiance attractive for foreign investors and is to a big extent explaining why they are staying away.

3. Discrimination of Serbs and other ethnically discriminated communities

Discrimination of Serbs and other ethnically discriminated individuals in the privatization process in Kosovo and Metohija is carried out along **two tracks**: **first**, in the process of compensation for workers fired from socially owned enterprises which are included in the privatization process, and, **second**, through an ethnically pure composition of the new owners of companies in Kosovo and Metohija.

First, UNMIK regulations envisage that 20% of the funds acquired through privatization belong to persons who were registered as employees in a socially owned enterprise at the time of privatization, under the condition that they had been working in the respective enterprise for at least three years. By this Regulation UNMIK contributed to ethnic cleansing of Kosovo and Metohija.

The list of employees who are entitled to compensation is composed by a body representing the employees in cooperation with the Federation of independent trade unions in Kosovo. Afterwards, the list is submitted to KTA, which makes corrections if needed and creates the final version. Workers who are not on the list, and think that they would have been registered had they not been discriminated, can appeal to the Special Chamber of the Supreme Court of Kosovo within 20 days upon the final announcement of the list in the media. Every appeal must contain relevant documents.

In the majority of cases former employees of Serb and other discriminated nationalities were omitted from these lists, although they were employed during many years in enterprises in Kosovo and Metohija.[3] At the time when the privatization process started, members of discriminated communities expelled from the territory of Kosovo and Metohija were refugees and internally displaced persons. They can prove their rights only in court. Their access to the lists, and necessary documents is extremely cumbered.

Members of ethnically discriminated communities who remained in the territory of Kosovo and Metohija are also in a difficult position. They have mainly been fired and are not on these lists. Since

[3] According to data from the official KTA web-site.

they can hardly communicate with enterprises in which they worked due to security reasons, they face difficulties in collecting documents necessary to prove of their rights in court.

The biggest problem is that the archives of socially owned enterprises have been mainly destroyed.

The short deadline of only twenty days in which the documentation has to be transferred to the court is also one the procedural obstacles in these circumstances.

Second, according to the official KTA data from the first and second round of privatization in the process of privatization of Kosovo and Metohija the buyers of companies are in the majority of cases ethnic Albanians. This situation would not be contentious, had there not been a recent history of dramatic conflicts between the ethnic groups. However, in view of this fact, the ethnically pure composition of the new owner structure over capital in Kosovo and Metohija does not contribute to the process of return of refugees and internally displaced persons, nor does it alleviate the employment of citizens of other ethnic groups, and it cannot be ignored in circumstances of a post-conflict reality.

In all subsequent rounds of privatization KTA ceased to publicly announce the names of the buyers. This was the objection to the process of privatization in Kosovo and Metohija which was also expressed in the report of the former Special Envoy of the UN SG, Kai Eide[4]. In this report he points out the significance of inclusion of members of ethnically discriminated communities into the privatization process and indicates the possibility of their discrimination when employment in privatized enterprises is concerned.

The reason why there are no investors of other ethnic affiliation is also the fact that documentation related to enterprises under privatization is most often only in Albanian. Linguistic discrimination was not avoided in this process of importance for further economic development of Kosovo and Metohija.

Very often, those participating in the tender and are not Albanians are subject to direct pressure to give up their participation which is also strengthening discrimination.[5]

4. Chosen method of privatization is non-transparent

In its Report of September 2, 2004, the Contact Group urges UNMIK and PISG to secure transparency of the tenders and the entire process of privatization.[6] However, the very procedure of selling the "new enterprises" via tenders is by its nature less accessible to the public than in the case of public auctions. Tender procedure implies closed bids, and a special commission chooses the best one, whilst public auction implies public competition of bidders.

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[4] Letter dated 7 October 2005 which the Secretary-General addressed to the Security Council – Report on a comprehensive review of the situation in Kosovo, presented by Mr. Kai Eide, Special Envoy of the Secretary-General.

[5] This is the case with the privatization of Hotel "Grand" in Pristina, for which the biggest bid came from a Macedonian company, which won the tender, but due to threats and pressures it decided to step out and has also lost the right to get back the deposit.

[6] http://pristina.usmission.gov/pressr/prs45.htm.

The public has no information on who made the biggest bid in a tender and who is the new owner of an enterprise, because the KTA no longer publishes their names.[7]

The lack of relevant information and significant exclusion of the public indicate that **transparency of the procedure is only declaratory and leaves room for misuse**.

5. Privatization of big plants

Privatization-related experience of the new EU member States as regards big plants which contribute to development, shows that privatization lasted 10-15 years and was carried out in numerous phases. Every privatization in circumstances of high political risk, which is the case with privatization in Kosovo and Metohija, results in smaller profits. Therefore, the World Bank suggested that the process of privatization of big plants in Kosovo and Metohija should be postponed.[8]

UNMIK administration, however, supports privatization of big plants: it already announced pre-qualification tenders, which are the first phase of privatization process, and allow **investors to enter into the electro-energy system of Kosovo and Metohija in a completely non-transparent manner**.

The passing of laws on the procedure for granting concessions can also create a risk related to the privatization of big plants, despite mentioned recommendations of the World Bank.

In June 2006 KTA announced the tender for the administrator of "Trepca"[9], who will be the plant manager until finalization of the reorganization process. This tender does not reveal criteria as regards qualifications and the experience of the administrator. Serbia's Development Fund, the biggest shareholder (55%) and one of the biggest creditors (60 million Euros) was not invited to this Board. The Government of Serbia requested inclusion of her representative, but UNMIK ignored this.

Economic results of privatization in Kosovo and Metohija are negative: (a) most of privatized enterprises have not started efficient production, and (b funds acquired are blocked on the KTA account. Here we come to the **question what was the real reason for accelerated privatization**, since main arguments for its start before the status solution were exactly of economic and developmental nature. Bearing in mind the revenues, it can be assumed that privatization in Kosovo and Metohija had completely different motives.[10]

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[7] KTA typically publishes only the code of the buyer of the new enterprise. For instance: "Krikos" was bought by the code "P56", the buyer of the motel "Dardania" is under the code "P92"... Data from the official web-site of the Kosovo Trust Agency – www.kta-kosovo.org.

[8] World Bank Report, No. 35262-HK од 30.03.2006.

[9] The mining-metallurgical-chemical complex "Trepca" is a conglomerate of 27 legal subjects, whose legal status is not defined and it has two administrations – the Serbian one and that of UNMIK.

[10] The example of the selling of the "Peć Brewery" for only eleven million Euros, whilst breweries in the Western Balkans were been sold for prices ranging from hundred to three hundred million Euros.

Privatization under these UNMIK methods violates the basic rights, in the first place of individuals and firms of Serbian origin. Such privatization does not contribute to the establishment of a multiethnic society.

Serbia's appeals to UNMIK and KTA to stop this process and remove the mentioned inadequacies have constantly been ignored.

6. Property rights

Return of usurped property

Aiming to return the usurped Serb property in Kosovo and Metohija, UNMIK established a Housing and Property Directorate (HPD) which had the mandate to decide upon requests for property return and issue decisions to evict usurpers and to implement these decisions. This was made by Regulations 1199/23 and 2000/60. From 2000-2005 this Directorate received **29,000 requests,** majority of them submitted by Serbs. Representatives of UNMIK, HPD, and Kosovo Property Agency (KPA) boast to have solved 90% of the requests received, and simultaneously admit that **25,000 decisions on the property return have not been implemented**.

There are also many cases in which the Serbs' requests were approved and the Albanian usurpers were evicted, but since in environments like Pristina the Serbs could not stay, these apartments were again usurped. Requests for the eviction of new usurpers are refused, because the Agency had ended the case, and further procedure lays upon the Kosovo Police, which often play deaf. Also, HPD considers to have positively resolved cases by a declaratory decision to return the property to the owner, even though it was later discovered that property had been destroyed.

It often happens that the usurpers destroy the apartments and houses before they leave them. In the majority of cases there was no adequate reaction of Kosovo Police and Prosecutors and no criminal charges were filed against perpetrators. The Kosovo Police do not assist real owners in attempts to evict usurpers.

In 2006 UNMIK founded a new institution, the Kosovo Property Agency (KPA), for return of usurped houses and apartments and also of business premises, agricultural and construction land. KPA has also in charge of implementing decisions of HPD. Until now, KPA received 33,000 requests for the return of usurped property, and the majority (26,000) are related to land. Although it continues to receive 500 requests per week, KPA decided that December 3, 2007, would be the final deadline for submission of requests. UN GS Special Representative J. Ruecker has not decided to prolong this deadline.

A typical situation regarding usurped Serbian property is illegal construction by the Albanians. Old Serbian houses are destroyed and Albanians build houses or business premises in their place. The Municipal Construction Inspection does not react to these cases, although there are unresolved cases concerning property rights and pending procedures before Kosovo Property Agency. The Municipal

Construction Inspection and the Kosovo Police Service do not react upon request of the real owners. Municipal functionaries and members of the Kosovo Police Service are also among these usurpers. This was the reason why the Regulation 2006/50 on property return was suspended in August 2007. Albanian functionaries in many towns (the best known case is the one in Klina) opposed its implementation.

It is worth mentioning that KFOR is also among the usurpers of property in Kosovo and Metohija, since it occupies private properties and pays none or inadequate rents.

7. Serb cultural heritage in Kosovo and Metohija

The numerous Serb monuments which have been created during the centuries, confirm the historic significance of the territory of Kosovo and Metohija for the Serb people, its State and Church. Serb historic monuments and monuments of culture in Kosovo and Metohija are an unrepeatable expression of creativity in different epochs, and are keeping the memory of both the strong medieval Serb state, and of historical disasters and stagnation under occupation during many centuries.

The destruction of Serb cultural heritage and the eradication of the traces of development of the Serb State and Church in the territory of Kosovo and Metohija is no doubt something that goes counter civilized standards. The destruction of the Serb cultural heritage, its renaming into the heritage of other peoples and a continuous removal of symbols of cultural identity of the Serb people represent overt **ethnocide** in contemporary Europe.

Serb artistic, cultural and sacral heritage in Kosovo and Metohija (mobile and immobile cultural monuments) has been suffering and is continuing to suffer the most sever and brutal damages and devastation due to war destructions, daily vandalizing assaults and because the possibility for the relevant Serbian institutions to monitor the Serb holy objects was reduced, and almost revoked. Their presence is not acceptable to the Albanian side. Therefore, the activity of Serb institutions authorized for protection and conservation is limited to only occasional participation of individual Serb experts in the protection and reconstruction of Serb cultural heritage.

The common program of the Council of Europe and the Commission of the European Union under the title "Project plans for integrated reconstruction – monitoring of architectural and archeological heritage" was initiated in the Balkan countries in 2003. This program includes also the Serb cultural heritage in Kosovo and Metohija. The List of Priorities for Intervention related to the reconstruction of monuments and sites was established in February 2004. The List was revised in May 2004, in order to include the most significant monuments damaged in March 2004. The List includes eleven Serb Orthodox monuments and was approved by UNMIK, PISG and the Ministry of Culture of the Republic of Serbia. This program also does not enable the Serb institutions for protection and conservation to perform the work for which they are authorized.

The **"Memorandum on Understanding** and the General Principles of Reconstruction of Serb Orthodox Churches, of Cultural and Historic Buildings and other Religious Sites damaged during the Riots in March in 2004", was signed within the above mentioned Common Program in the beginning of 2005 upon initiative of the Council of Europe, by the Serb Orthodox Church, the Provisional Ministry of Culture of Kosovo and UNMIK as an observer (witness). Pursuant to this Memorandum a common working group for reconstruction, the Reconstruction Implementation Commission, was established, in which are a representative of the Serbian Orthodox Church and a representative of the Ministry of Culture of Serbia, i.e. the Director of the Republic of Serbia's Institute for the Protection of Cultural Monuments. By participating in this working group the Ministry of Culture of Serbia has given legitimacy to this process. Despite the fact that by participating in this the Ministry of Culture has supported the reconstruction process in the province, the relevant Serbian institutions for protection and preservation cannot participate in the protection and reconstruction of the Serb cultural heritage. What is possible is only occasional participation of individual Serbian experts in certain projects. Thus, **the international administration is forcing Serbia to transfer its competences to provisional institutions** (PISG) **which are not prepared for this in terms of knowledge, experience and capabilities.**

By engaging in the reconstruction process Provisional Institutions of Self-government in Kosovo should reach the standard established in this field (Standard VI). However, the memorandum relates only to the damage inflicted in March 2004. **Damage inflicted to Serb cultural heritage in the period 1999-2004 is not a matter of concern of either UNMIK, or PISG.**

The Council of Europe attempts to extend the cooperation mechanism which followed from the Memorandum of Understanding into a permanent model for an institutional framework for the protection of Serb cultural heritage in Kosovo and Metohija. In this way the Council of Europe is supporting the exclusion of Serb institutions for reconstruction and conservation from the reconstruction of Serb cultural heritage in Kosovo and Metohija.

7.1 Damage inflicted to Serb cultural heritage in Kosovo and Metohija

According to the data of the Government of the Republic of Serbia since 1999 were destroyed 156 churches and monasteries, out of which 34 were destroyed March 17-18, 2004.

The second UNESCO Mission, in March 2004, gave the following remarks (quoted from the report): "devastating damage caused by fire"; "consequence of uncivilized rampage"; "hooligans hammered the outer walls"; "bombs were thrown, as well"; "completely devastated"; "Emperor Dušan's grave was destroyed and desecrated"; "the mob destroyed the entire Serb quarter of the old town in Prizren"; "the cemetery was desecrated and vandalized"; "the monastery was completely destroyed"; "vandals scribbled disgusting graffiti on the walls', "the altar was vandalized", etc.

Three Missions of the Council of Europe gave the following remarks in 2004 (quoted from the reports): "the cupola and bell-tower destroyed", "wall paintings destroyed", "the interior damaged through explosions and fire", "cemeteries desecrated and damaged", "damaged by fire and looted", "leveled to the ground", "trees were cut down", "the church and its night quarters were stoned", etc.

Increasing informal constructions transform the area and endangers Serb cultural heritage: a disproportionately big object in Gazimestan; housing objects penetrate into the courtyard of the Church of the Holy Virgin of Ljeviš from above the fence wall; industrial and catering objects endanger the immediate surroundings of the monastery Gorioč; informal construction destroys the exceptional natural features of Brezovica, etc.

Destruction of locations due to the construction of new settlements: leveling/filling in of the Serb cemetery in Pristina (in 2007), etc.

Destruction of the ambience surrounding Serb cultural and natural heritage: transforming of some significant urban locations (peak Prevelac at the entrance to Sredačka Župa) and entire routes (zones adjacent to traffic routes) into waste areas; destruction of the ecological system due to inadequate management of water accumulations –for instance Gračanka River, etc.

Disposing of Serb cultural heritage through excluding or changing toponyms: the name Metohija is omitted from the name of the province (even in UNESCO – the Serbian side had submitted the document "Serbian medieval monuments in Kosovo and Metohija" but it was adopted document under the title "Medieval Monuments in Kosovo" two key-words were omitted, i.e. "Serb" and "Metohija", by which a renaming and "de-Serbization" was performed.

Violations of law: during the protection and reconstruction process, the laws of the Serbian State are breached, as well as provisions of international conventions; procedures are breached in the process of passing laws on the protection and reconstruction – there is no consultation with the State of Serbia, which is member of the Council of Europe as well as UNESCO, and new laws are submitted to these organizations for the approval.

7.2 Specific features of the Serb cultural heritage in Kosovo and Metohija

- In Kosovo and Metohija there are 1,300 Orthodox churches and monasteries; 459 immobile cultural properties; 62 objects of extraordinary significance for Serbia and Serbs. Just to compare: in Belgrade, the capital of Serbia, there are only 9 (nine) such objects but not from the medieval time;
- Peć Patriarchate: the seat of the Serb Orthodox Church and the Serb Patriarch;
- Gračanica: relocated seat of the Eparchy Raška-Prizren and Kosovo-Metohija;
- The oldest seat of the Serb Church in Kosovo and Metohija – Episcopate Holy Virgin of Hvostan from 1219;
- Sepulchral churches of Serb rulers: Saint Archangels near Prizren (Stefan Dušan), Banjska (Stefan II Milutin), Dečani (Stefan III Dečanski); sepulchral locations for Church eminencies: Patriarchate of Peć in which 3 Patriarchs and 4 Archbishops are buried; sepulchral locations of hermits: Devič, where Joanikije Devički is buried, etc.
- On the UNESCO List of World Heritage, cultural and natural, are: monastery Dečani, monastery Gračanica, monastery Peć Patriarchate and the Church of the Holy Virgin of Ljeviš;
- The same monuments are also listed on the UNESCO List of World Heritage in Danger;
- Šar-Mountain is on the UNESCO preliminary list for inclusion into world cultural and natural heritage;

• Town Novo Brdo represents a specific historic entity: "symbol of medieval Serbia's wealth", the biggest medieval mining and trade town in the Balkans (in the Middle Ages there were around 30 towns in Kosovo and Metohija); town with the Statute and Code of Despot Stefan Lazarević;
• Monumental complex of Gazimestan, as the site of the battle of Kosovo (1389);
• Artistic peaks: authentic architectural creation of the church with five cupolas within the monastery Gračanica, fresco-compositions of high artistic value in Byzantine art in the Church of the Holy Virgin of Ljeviš; the beauty of the stone decoration in Dečani and Banjska, the harmony of churches of Peć Patriarchate; unique fresco-paintings;
• Significant representatives of profane and folk architecture: courts of Serb rulers, bridges, the oldest log-cabin in Serbia "Danilović House", irretrievably destroyed;
• Numerous charters on erection and donation of churches and monasteries;
• Legal Code of the Emperor Dušan – medieval monument of law (1349 and 1354);
• Rich monastery treasures (entire or fragmented);
• Numerous icons, religious books and objects.

7.3 Serb cultural heritage under UNMIK administration

Despite obvious destruction of Serb cultural monuments in the period immediately after June 1999, UNMIK together with KFOR did not take initiative to stop or prevent it.

UNMIK and KFOR did not implement the provisions of **The Hague Convention** (Convention on the Protection of Cultural Property in the Case of Armed Conflict – The Hague, 1954), nor the relevant provision of the UNMIK-FRY/Serbia Common Document signed on November 5, 2001.

They did not:

- Prevent, deter or stop any act of vandalism directed towards cultural property (Article 4, The Hague Convention),
- Support "efforts of relevant national authorities" to secure protection and maintenance of cultural property (Article 5 of The Hague Convention),
- Enable the armed forces and experts of the High Contracting Party to monitor the respect of cultural property and to cooperate with civil authorities which are in charge of their preservation (Article 7, The Hague Convention).

UNMIK took over civil administration in Kosovo and Metohija after the Kumanovo agreement in 1999, and it has never made an appropriate report on devastations of cultural property either in the period June 1999-March 2004, or after March 2004.

UNMIK did include UNESCO neither appropriately nor promptly into the protection and reconstruction of Serb cultural heritage. The first official UNESCO Mission came to Kosovo and Metohija (March 12-18, 2003) upon invitation of FR Yugoslavia. UNESCO treated reports made until then as void and unofficial.

Immediately after issuing the Regulation on the Constitutional Framework, UNMIK transferred the competences in the field of protection of cultural property to the Provisional Institutions of Self-government, which lack adequate capacities to protect and reconstruct the Serb cultural heritage.

In 2001 UNMIK's Department of Culture undertook to make a "list of built heritage", with the explanation that the "former inventory was not in compliance with international standards" (Ref. 251/01). Such assessment was not made in any former Yugoslav republic. There is reasonable doubt that UNMIK wanted to make a new register in order to erase from the list those Serb cultural properties which were destroyed or severely damaged after June 1999.

PISG and UNMIK never included relevant Serbian institutions, nor supported their establishment not even in the north of Kosovo and Metohija.

We point out that **UNMIK did not implement** the following international documents, whose implementation would be protecting Serb cultural property:

- **The Second Protocol to the Hague Convention** (from 1999), which introduces international criminal responsibility of persons who destroy, or order destruction of protected cultural property;
- **UNESCO Declaration** concerning the Intentional Destruction of Cultural Heritage (October 2003);
- **UNESCO Convention** on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in (November 1970);
- **UNESCO Convention** on Stolen or Illegally Exported Cultural Objects (June 1995).

Vandalism over Serb cultural heritage is continuing without any sanctions for the perpetrators.

UNMIK, which signed the Memorandum on the Reconstruction of Serb Cultural Heritage as an observer (witness), allowed for this document to be signed by the Serb Orthodox Church and PISG, but not by the Republic of Serbia. This is a precedence in the practice of protection of cultural heritage, since its protection is within **state but not church competences**.

8. Dialogue

On the basis of the UNMIK – FRY/Serbia Common Document, signed in November 2001, Working Groups for cooperation were formed. Today, only one of them is active – Working Group for Missing and Abducted persons. Other Working Groups are inactive since this is the interest of the Albanian side.

8.1 Missing and abducted persons

In 2004, within the Belgrade-Pristina dialogue, a Working Group for Missing Persons was created. Representatives of the Commission for Missing Persons of the Government of the Republic of Serbia

participate in its work. In 2005 a Subgroup for forensic issues was also formed. The International Committee of the Red Cross is the mediator.

Since 1998 in Kosovo and Metohija were registered 5,800 missing persons. Abductions started in 1998 and did not stop even after Resolution 1244 was adopted, and were even intensified during June and July 1999. The fate of 1,475 persons of Albanian nationality and 552 persons of other nationality is still unknown.

8.1.1 Activities of the Republic of Serbia

Three mass graves were discovered in the territory of Serbia (Batajnica, Perušac, Petrovo Selo) and earthly remains of 800 persons of Albanian nationality were exhumed. All earthly remains were given to UNMIK and up to now 764 bodies were identified. In the period June 5-8, 2007, on-site verification was conducted upon information received from UNMIK that in a place called Majdan (Raška municipality) there was a mass grave. It was ascertained that there was no mass grave at this location (analysis were carried out in the presence of UNMIK, ICRC, ICMP, OSCE and PISG).

8.1.2 Activities of UNMIK

Earthly remains of 378 Serbs and persons belonging to other ethnically discriminated groups were exhumed in the territory of Kosovo and Metohija, out of which 262 were identified and returned to their families. The majority of them were found on a basis of information provided to UNMIK by the Republic of Serbia. This shows that PISG in Kosovo and Metohija do not make sufficient efforts to resolve the problem of the missing persons, as well as that UNMIK does not exercise sufficient pressure upon PISG to convince them to responsibly approach this humanitarian question.

Additionally, discovering the truth about the missing persons in Kosovo and Metohija was made difficult, because The Hague Tribunal had undertaken to perform exhumation and identification for its purposes. In this process, 4,019 bodies were exhumed, out of which 2,001 were identified. Subsequently, 2,018 unidentified bodies were later buried in unknown locations. The Hague Tribunal did not transfer to UNMIK, which has jurisdiction over these issues in the province, the documentation about exhumations, identifications and the locations of burial of unidentified persons. The Working Group for Missing Persons has twice asked The Hague Tribunal to deliver this documentation, without any success.

So far, the Working Group had been convened 23 times, and the Subgroup met 14 times. It shows that cooperation within the dialogue Belgrade-Priština, established by the Common Document UNMIK-FRY/Serbia, is possible only if there is political will on both sides.

9. Kosovo Protection Corps

1. UNMIK administration was authorized to provide for security in Kosovo and Metohija, and its mandate included disarmament as well.

2. UNMIK transferred its competences in the field of security and protection of human rights to the Kosovo Protection Corps (KPC).

3. Kosovo Protection Corps was established in September 1999 pursuant to the Agreement – Statement on Demilitarization and Transformation of the Kosovo Liberation Army (KLA) signed on June 20, 1999, by then commander of KFOR, General Micheal Jackson, and leader of KLA Hashim Tachi - and Regulation 1999/8, issued by Bernard Kouchner, UN SG Special Representative. Pursuant to these documents KPC is a civil organization with the following duties:

- To assist in removing consequences of catastrophes caused by fire, major industrial accidents and accidents caused by toxic agents,
- To engage in pursuit and rescue,
- To assist in humanitarian activities,
- To assist in demining, and,
- To take part in reconstruction and renovation of infrastructure.

It is particularly stressed that KPC has no role in the defense system, in implementation of law, in controlling mass disorder/demonstrations, internal security problems and in law enforcement.

It is established that the UN SG Special Representative (Chief of UNMIK) is in charge of managing and organizing the work of KPC, and that the KFOR Commander is in charge of daily controls.

It has been established that KPC includes 5,000 troops, out of which 3,000 are active and 2,000 in reserve. KPC reserve troops were to be disbanded during 2000, but so far it was not happened.

The Agreement - Statement on Demilitarization says that all weaponry will be stored and that KFOR will take over all storage premises in 90 days, and decide on their further use. Several KFOR commanders were trying to implement this obligation, but without success.

4. Recruitment for the KPC was carried out by the International Organization for Migration (IOM). 20,271 persons applied, out of which 17,348 (85%) were former members of the KLA.

5. KPC is organized in a military manner, in accord with the NATO brigade structure and standards – the command structure with the Headquarters and respective structures at the top (from J1 to J8), commissioned and non-commissioned officer ranks, training in Kosovo and Metohija and abroad, including also use of combat ammunition.

6. KPC is deployed in six zones of operation in Kosovo and Metohija. It comprises the Kosovo Guard, Training and Doctrine Command, Command for Logistics, Brigade for Civil Protection, Medical Battalion, Engineer Corps, Air-Force Unit, Communication Battalion 50. Each Command is like a battalion and has a mobilization nucleus (55 persons) for development of its four brigades, a guard unit and rapid reaction unit (80 persons), an engineer unit (50 persons), inspection unit (20 persons), ABCD unit (20 persons) and a unit for support (15 persons), which makes a total of 547 troops in each zone.

7. Nominally, training is conducted pursuant to plans related to officially established duties of KPC, but it is obvious that this is the nucleus of the future army of Kosovo:

- Military organization;
- Ranks, uniforms, marks;
- Armament;
- Training (not the proclaimed, but the one conducted).

8. UNMIK has elaborated and given the KPC the document (the authors are experts from the Ministry of Defense of Great Britain) which regulates the formation of a special Department with the UNMIK Office, which will be the future nucleus of the Ministry of Defense of Kosovo and Metohija.

We point out that KPC is in many ways linked to the Kosovo Liberation Army[11] – an armed group which was listed as a terrorist formation:

- Serbia declared it a terrorist group because it used arms to fight against the constitutional system and for secession of part of the territory of a sovereign state, and endangered regular police and army units, and civil population;
- U.S. terrorist list included KPC because of its methods, since it was killing civilians, primarily Serbs, but also Albanians loyal to the Serbian State.

[11] Web-site KPC – http://www.tmk-ks.org.